
(2000) 02 AP CK 0080
In the Andhra Pradesh High Court
Case No : C.R.P. No. 2833 of 1999

Vadla Ramaswamy Achary and Kumara Babu	APPELLANT
Vs	
V. Leelavathamma and Another	RESPONDENT

Date of Decision : 15-02-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2)

Citation : (2000) 2 ALT 216 : (2000) 1 APLJ 457

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : R. Radha Krishna Reddy, for the Appellant; S.S. Bhatt, for the Respondent

Final Decision : Dismissed

Judgement

G. Bikshapathy, J.—This revision petition is filed against the orders dated 23-3-1999 made in I.A. No. 848 of 1998 in O.S. No. 101 of 1996 on the file of learned Principal Junior Civil Judge, Madanapalli, Chittoor District.

2. The petitioner is the plaintiff. The plaintiff filed the suit for partition of the suit schedule property. During the course of the trial of the suit, the first respondent-V. Leelavathamma filed an application to implead her as the second defendant in the suit on the ground that the suit schedule property was purchased by the petitioner-plaintiff and the second respondent-first defendant out of the sale proceeds of the jewellery belonging to their mother and also their mother executed a Will bequeathing half share in the suit schedule property in favour of the first respondent, who is none else than the sister of the petitioner and second respondent. The said application was allowed by the learned Judge by the order dated 23-3-1999, against which, the present revision petition has been filed.

3. Learned Counsel for the petitioner seriously contends that the order of the Court below is wholly erroneous and contrary to law. He submits that the lower Court has misconstrued the provisions of Order 1 Rule 10 of the Code of Civil

Procedure, 1908 (for short "CPC"). Moreover the presence of the first respondent is not at all necessary for the adjudication of the dispute between the petitioner-plaintiff and the second respondent-first defendant. In such a situation, the application is filed only to drag on the proceedings so as to enable the second respondent-first defendant to continue to enjoy the suit schedule property on one ground or the other. Therefore, he submits that the order of the lower Court is liable to be set aside.

4. On the other hand, learned Counsel for the first respondent submits that the petitioner and the second respondent-first defendant are the brothers of the first respondent and the second respondent-first defendant has no objection for impleading her as defendant and that no prejudice will be caused to the petitioner-plaintiff, if the first respondent is added as the second defendant in the suit.

5. I have considered the respective contentions and also perused the order under revision. The application was filed under Order 1 Rule 10 CPC to implead the petitioner therein viz., the first respondent herein, as second defendant in the suit. It is her case that the property was purchased by selling the jewellery of their mother and, therefore, the mother was the owner of the property. Further, the mother also executed a Will bequeathing half share in her favour and hence she is a necessary party to the proceedings for proper adjudication of the suit. Under Order 1 Rule 10 (2) of CPC, it is always open for the Court to implead the parties either on the application of the parties or suo motu to enable the Court to effectually and completely to adjudicate upon and settle all the questions involved in the suit. By virtue of this provision, the Court has taken the view that the presence of the first respondent is necessary for proper adjudication of the case. Even though the learned Counsel for the petitioner submits that the suit was filed for partition of the suit schedule property and if the first respondent wants to have a share in the suit schedule property by virtue of Will, she is required to file a separate suit claiming share in the property in terms of will, but she cannot be impleaded in the suit, I am unable to accept the said contention. It is to ensure that the matter is effectually and completely adjudicated upon and to put quietus to the litigation between the parties such a power is vested with the Court. Moreover no prejudice will be caused to the petitioner-plaintiff or to the second respondent-first defendant if the first respondent is added as party to the suit.

6. Under these circumstances, I do not find any merit in the revision petition. Accordingly the revision petition is dismissed. However, the lower Court shall proceed with the trial of the suit expeditiously and dispose of the same on merits within a period of three months from the date of receipt of a copy of this order. No costs.